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Supreme Court of the United States

OCTOBER TERM, 1924, No. 733

BLAKELY D. McCAUGHN, Collector of Internal Revenue,
Petitioner,

against

CHARLES H. LUDINGTON,
Respondent.

CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE THIRD CIRCUIT.

MOTION TO ADVANCE

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The above named respondent, Charles H. Ludington, by his counsel, respectfully requests this Honorable Court to advance the above-entitled cause and to set the same for hearing on January 5, 1925.

The reasons for this request are as follows:

The controversy arises in an action to recover income taxes paid under due protest and involves the construction of sections 202-a and 214-a of the Revenue Act of 1918 (c. 18, 40 Stat. 1060, 1067), which fix the losses deductible from gross income under said Act. The Circuit Court of Appeals herein, reversing the District Court,

held that the market price or value as of March 1, 1913, was the proper statutory basis for determining the deductible loss, and hence that where property was acquired prior to March 1, 1913, at a price less than the fair market value on March 1, 1913, and thereafter sold by the taxpayer in 1919 at a less price than the value of 1913, the taxpayer was entitled to deduct the difference between the fair market value on March 1, 1913, and the sales price, and not merely the difference between the original purchase price and the amount realized on the sale, which would have been less.

This question of statutory construction is of importance, not only to the Government, but to a large number of taxpayers as well. The undersigned counsel is informed and believes that the Internal Revenue Department is continuing to compel payment of income taxes upon the principle which the Circuit Court of Appeals has unanimously held to be erroneous in the case at bar. That course necessarily involves unjust hardship to taxpayers; it complicates the administration of the tax laws, and it tends to create uncertainty and confusion. The Revenue Act in question was passed February 24, 1919, or nearly six years ago, and innumerable returns are affected.

There is now pending in this court, on appeal from the Court of Claims of the United States, the case of *Flannery v. United States*, No. 527, October Term, 1924, which has been set for hearing on January 5, 1925. The case at bar and the *Flannery* case involve different aspects of the above question concerning the proper construction of sections 202 (a) and 214 (a) of the Revenue

Act of 1918 as they relate to deductible losses arising out of the sale of property acquired prior to March 1, 1913.

In the *Flannery* case a sale was made by the taxpayer at more than the cost but at less than the market value on March 1, 1913. In the case at bar the sale was both at less than the cost and less than the market value on March 1, 1913.

As the case at bar and the *Flannery* case are thus closely related, and the latter has been set down for argument on January 5th, it is submitted that it would promote the due administration of the revenue laws for the court to hear and have before it the argument of both cases before declaring the proper meaning of these sections of the statute in question.

In view of the importance of the questions involved, the amounts depending upon their solution, and the fact that the *Flannery* case has been set for hearing on January 5, 1925, it is requested that this case be likewise advanced and set down for hearing on January 5, 1925, with and immediately after said *Flannery* case.

The Solicitor General in his petition for a writ of certiorari in the case at bar among other things said:

"There is now pending in this Court on appeal from the United States Court of Claims the case of *United States v. Harriet R. Flannery, et al.*, No. 527 on the docket for the present term, in which another aspect of this same question is involved, namely, the sale by a taxpayer in the year 1919 of shares of stock owned by him on March 1, 1913, at less than the fair market price or value thereof on said date but at more than the anterior cost thereof. In the instant case there is involved the other aspect of the question, namely, sale by a

taxpayer in 1919 of shares of stock owned by him on March 1, 1913, at less than the fair market price or value thereof on said date as well as at less than the anterior cost thereof. Petitioner considers it desirable that this petition be granted in order that the instant case may be heard by this Court in connection with the *Flannery* case, so that there may be a complete adjudication by the Court of all phases of this important question."

Since the said *Flannery* case has been allotted full time for argument by the court, the undersigned counsel would deem it sufficient for the presentation of the present case if it were treated as on the summary docket for the purposes of time allowance.

December, 1924.

WILLIAM D. GUTHRIE,
Of counsel for the respondent.

